

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

PAULA LABRIE, ALFREDO MACIAS,
PETER MILLMAN, TOM CHORTABTIM,
RAF SISON,

Plaintiffs,

vs.

UPS SUPPLY CHAIN SOLUTIONS, INC.,

Defendant.

CASE NO. 4:08-CV-03182 PJH

[PROPOSED] ORDER

**(1) CONDITIONALLY CERTIFYING
SETTLEMENT CLASSES;**

**(2) PRELIMINARILY APPROVING THE
CLASS SETTLEMENT;**

**(3) APPOINTING CLASS
REPRESENTATIVES AND CLASS
COUNSEL;**

**(4) APPROVING CLASS NOTICES AND
RELATED MATERIALS;**

**(5) APPOINTING SETTLEMENT
ADMINISTRATOR; AND**

**(6) SCHEDULING FINAL APPROVAL
HEARING.**

1 On December 2, 2009, a hearing was held on the joint motion of plaintiffs Paula
2 LaBrie, Alfredo Macias, Peter Millman, Tom Chortabtim, and Raf Sison ("Plaintiffs") and
3 defendant UPS Supply Chain Solutions, Inc. ("UPS SCS"), for certification of settlement classes
4 in this action, preliminary approval of the parties' proposed settlement, approval of the notices to
5 be sent to the classes about the settlement and related forms, and the setting of a date for the
6 hearing on final approval of the settlement. Lynn Rossman Faris and Eleanor Morton of Leonard
7 Carder, LLP appeared for the Plaintiffs; and Robert P. Kristoff and Zachary P. Hutton of Paul,
8 Hastings, Janofsky & Walker LLP appeared for UPS SCS.

9 The Court having read and considered the papers on the motion, the arguments of
10 counsel, and the law, and good cause appearing therefore,

11 IT IS ORDERED:

12 1. The Court has jurisdiction over this action and the parties' proposed settlement
13 under 28 U.S.C. sections 1331 and 1367, as Plaintiffs' complaint was brought under the Fair
14 Labor Standards Act, 29 U.S.C. § 201 *et seq.*; and related California wage-and-hour law; the
15 Court has original jurisdiction over Plaintiffs' federal law claims; and the Court has supplemental
16 jurisdiction over Plaintiffs' state-law claims because they arise from the same alleged transactions
17 and occurrences as do Plaintiffs' federal-law claims.

18 2. The proposed California Class satisfies the requirements of a settlement class
19 under Rule 23 of the Federal Rules of Civil Procedure, and the proposed FLSA Settlement Class
20 satisfies the requirements of a collective action settlement class under section 16(b) of the Fair
21 Labor Standards Act, 29 U.S.C. § 216(b), because the class members are readily ascertainable and
22 a well-defined community of interest exists in the common questions of law and fact affecting the
23 parties.

24 3. The following classes of persons are certified in this action solely for the purposes
25 of the Settlement:

26 a. California Class: All persons who worked for UPS SCS while classified
27 as independent contractor couriers in California, at any time from July 2, 2004 through October
28 31, 2009, and who made 10% or more of their deliveries for UPS SCS from July 2, 2004 through

-- 2 --

1 October 31, 2009 in California.

2 b. FLSA Settlement Class: All persons who are not California Class
 3 Members who worked for UPS SCS while classified as independent contractor couriers in states
 4 other than California at any time from July 2, 2005 through October 31, 2009, and who filed with
 5 the Court a Consent To Become A Party Plaintiff, and those who were California Class Members
 6 but provided service for UPS SCS in states other than California after March 28, 2008.

7 4. The parties' Settlement Agreement (the "Settlement") (Declaration of Lynn
 8 Rossman Faris, Exh. 1) is granted preliminary approval because it appears to be fair, adequate
 9 and reasonable, appears to be the product of arm's-length and informed negotiations and to treat
 10 all class members fairly.

11 5. The parties' proposed notice plan, with class notices revised per the Court's
 12 instructions, is constitutionally sound because individual notices will be mailed to all class
 13 members whose identities are known to the parties, and such notice is the best notice practicable.
 14 The parties' revised proposed Notice of Proposed Settlement of Class Action, Conditional
 15 Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final
 16 Court Approval and proposed Claim Form (*id.*, Exhs. A and B) (the "California Class Notice
 17 Packets") are sufficient to inform members of the California Class of the terms of the Settlement,
 18 their rights under the Settlement, their rights to object to the settlement, their right to receive a
 19 proportionate Settlement Share or Opt-out and not to participate in the Settlement, and the
 20 processes for doing so, and the date and location of the final approval hearing, and therefore are
 21 approved. The parties' revised proposed Notice of Proposed Settlement of Collective Action,
 22 Preliminary Approval of Settlement, and Hearing Date for Final Court Approval and proposed
 23 Workweek Verification Form (*id.*, Exhs. C and D) (the "FLSA Class Notice Packets") are
 24 sufficient to inform members of the Opt-In Settlement Class of the terms of the Settlement, their
 25 rights under the Settlement, their right to receive a proportionate Settlement Share, their right to
 26 comment on the Settlement and the processes for doing so, and the date and location of the final
 27 approval hearing, and therefore are also approved.

1 6. All members of the FLSA Settlement Class will receive a Settlement Share. Any
2 member of the California Settlement Class who has not previously filed a Consent To Become A
3 Party Plaintiff submit a timely Claim Form within thirty days after the date the Settlement
4 Administrator mails the Opt-Out Class Notice Packet will receive a Settlement Share.

5 7. Members of the FLSA Settlement Class shall have no right to object to the
6 Settlement, or to opt-out of the Settlement, because they have already opted-in by filing consent
7 forms to become party plaintiffs, but they have been provided the opportunity to submit written
8 comments regarding the Settlement to the Court.

9 8. Those members of the California Class who have not filed a Consent To Become
10 a Party Plaintiff, and who wish to object to the Settlement or to opt-out of the Settlement have
11 until thirty days after the mailing of the California Class Notice Packet to submit their objection
12 or Opt-out pursuant to the procedures set forth in the Class Notice.

13 9. CPT Group, Inc is appointed to act as the Settlement Administrator, pursuant to
14 the terms set forth in the Settlement.

15 10. Plaintiffs Paula LaBrie, Alfredo Macias, Peter Millman, Tom Chortabtim, and Raf
16 Sison are appointed Class Representatives. Lynn Rossman Faris, Eleanor Morton, and Jennifer
17 Keating of Leonard Carder, LLP are appointed Class Counsel.

18 11. The California Class Notice Packet and FLSA Class Notice Packet will be
19 disseminated according to the notice plan described in the Settlement Agreement and
20 substantially in the form submitted by the parties. Proof of distribution of notice will be filed by
21 the parties at or prior to the final approval hearing.

22 12. UPS SCS is directed to provide the Settlement Administrator as soon as possible
23 using best efforts and in no event later than thirty days after the date of this order the Class Data
24 as specified by the Settlement Agreement and Plaintiffs' Class Counsel shall provide to the
25 Settlement Administrator any and all information regarding current addresses of class members.

26 13. The Settlement Administrator is directed to mail the approved Opt-Out Class
27 Notice Packet and Opt-In Class Notice Packet by first-class mail to members of the respective
28 classes as soon as possible using best efforts and in no event later than ten days after receipt of the

-- 4 --

1 Class Data from UPS SCS.

2 14. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* ("CAFA"), not
3 later than ten days after the Parties' joint motion seeking preliminary approval of the Settlement
4 was filed in court, UPS SCS served upon the Attorney General of the United States and the
5 appropriate state official of each state in which a Class Member resides a notice of the Settlement
6 consisting of: a copy of the pleadings in this action; a notice of the scheduled judicial hearings in
7 this action; the settlement agreement; the Opt-Out Class Notice Packet; and the names of Opt-Out
8 Class Members who reside in each state and the estimated proportionate share of the Opt-Out
9 Class Members in each state compared to the entire Settlement. The notice of settlement also
10 invited comment on the Settlement. Accordingly, the Court finds that UPS SCS has discharged
11 its obligations under CAFA to provide notice to the appropriate federal and state officials.

12 15. A final hearing will be held on March 17, 2010, at 9:00 a.m., to determine whether
13 the Settlement should be granted final approval as fair, reasonable, and adequate as to the class
14 members. The Court will hear all evidence and argument necessary to evaluate the Settlement,
15 and will consider the Plaintiffs' Motion for Class Representative Payments, Attorneys Fees and
16 Costs. California Class Members and their counsel may support or oppose the Settlement and the
17 motion for awards of the Class Representative Payment and the Class Counsel Fees Payment and
18 Class Counsel Litigation Expenses Payment, if they so desire, as set forth in the Class Notice;
19 FLSA Class Members may comment on the Settlement and the Plaintiffs' Motion for Class
20 Representative Payments, Attorneys Fees and Costs.

21 16. Any California Class Member may appear at the final approval hearing in person
22 or by his or her own attorney, and show cause why the Court should not approve the Settlement,
23 or object to the motion for awards of the Class Representative Payment and the Class Counsel
24 Fees and Costs. For any comments or objections to be considered at the hearing, the California
25 Class Member or FLSA Class Member must file written objections and/or comments with the
26 Clerk of Court indicating briefly the nature of his/her comments, support or objection, and mailed
27 to Class Counsel, not later than thirty days after mailing of the California and FLSA Class Notice
28 Packets.

-- 5 --

1 17. If no objections or comments are made to the Settlement, the parties may apply to
2 the Court to expedite the date of the final approval hearing. The Court reserves the right to
3 continue the date of the final approval hearing without further notice to Class Members. The
4 Court retains jurisdiction to consider all further applications arising out of or in connection with
5 the Settlement.

6 Dated: December 4, 2009.

